

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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Leon HENRY,

Plaintiff,

-against-

TURNER CONSTRUCTION CO. et ano,

Defendants.

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TO THE HONORABLE BARBARA S. JONES, U.S.D.J.:

**REPORT AND**  
**RECOMMENDATION**

09 Civ. 7240 (BSJ) (MHD)

Pro se plaintiff Leon Henry filed a complaint alleging age discrimination against his former employer, Turner Construction Company, and its foreman, Richard Corrado, on August 17, 2009, and Chief Judge Preska granted plaintiff's request to proceed in forma pauperis.

On October 5, 2009, we wrote to plaintiff, advising him of the requirement of Federal Rule of Civil Procedure 4(m) that he serve defendants within 120 days of filing. (Letter to Leon Henry, Oct. 5, 2009). We noted in that letter that his deadline for service under this rule was December 15, 2009.

Despite this notice, on December 16, 2009, the docket still did not reflect defendants having been served. We contacted the

Pro Se Office of this court, which confirmed that in August it had sent plaintiff the necessary paperwork to have the U.S. Marshals effect service. We also contacted the U.S. Marshals' Office, which confirmed that it had not received the requisite service paperwork from plaintiff.

As a result, on December 22, 2009, we ordered plaintiff to "serve and file an affidavit by Friday, January 15, 2009 demonstrating good cause, if any, for his failure to accomplish service of the complaint upon defendants within 120 days [....]" (Order, Dec. 22, 2009). We warned plaintiff that absent a showing of good cause, we might recommend dismissal without prejudice. (Id.).

The deadline for such a filing has passed with no response by plaintiff. We therefore recommend that the complaint be dismissed without prejudice. See Fed. R. Civ. P. 4(m).

Pursuant to 28 U.S.C. § 636(b)(1)(c) and Rule 72(b)(2) of the Federal Rules of Civil Procedure, the parties shall have fourteen (14) days from this date to file written objections to this Report and Recommendation. See also Fed. R. Civ. P. 6(a), 6(d). Such objections shall be filed with the Clerk of the Court

and served on all adversaries, with extra copies to be delivered to the chambers of the Honorable Barbara S. Jones, Room 1920, and to the chambers of the undersigned, Room 1670, U.S. Courthouse, 500 Pearl Street, New York, New York 10007. Failure to file timely objections may constitute a waiver of those objections both in the District Court and on later appeal to the United States Court of Appeals. Small v. Sec'y of Health and Human Servs., 892 F.2d 15, 16 (2d Cir. 1989); Thomas v. Arn, 474 U.S. 140, 150-55 (1985), reh'g denied, 474 U.S. 1111 (1986).

DATED: New York, New York  
February 1, 2010

RESPECTFULLY SUBMITTED,



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MICHAEL H. DOLINGER  
UNITED STATES MAGISTRATE JUDGE

A copy of the foregoing Report and Recommendation has been mailed this date to:

Leon Henry  
P.O. Box 229  
Bronx, NY 10456

Pro Se Office  
United States District Court, Southern District of New York  
500 Pearl Street, Room 230  
New York, New York 10007-1312